

IC 6-3.5-8

Chapter 8. Municipal Option Income Tax

IC 6-3.5-8-1

"Adjusted gross income" defined

Sec. 1. As used in this chapter, "adjusted gross income" has the meaning set forth in IC 6-3-1-3.5. However, in the case of a municipal taxpayer who is not treated as a resident municipal taxpayer of a municipality, the term includes only adjusted gross income derived from the taxpayer's principal place of business or employment.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-2

"Department" defined

Sec. 2. As used in this chapter, "department" refers to the department of state revenue.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-3

"Fiscal body" defined

Sec. 3. As used in this chapter, "fiscal body" has the meaning set forth in IC 36-1-2-6.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-4

"Municipal option income tax" defined

Sec. 4. As used in this chapter, "municipal option income tax" refers to the tax authorized by this chapter.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-5

"Municipal taxpayer" defined

Sec. 5. As used in this chapter, "municipal taxpayer", as it relates to a particular municipality, means any individual:

- (1) who resides in that municipality on the date specified in section 21 of this chapter; or
- (2) who maintains the individual's principal place of business or employment in that municipality on the date specified in section 21 of this chapter and who does not reside on that same date in:
 - (A) a county in which the county option income tax, the county adjusted gross income tax, or the county economic development income tax is in effect; or
 - (B) a municipality in which the municipal option income tax is in effect.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-6

"Municipality" defined

Sec. 6. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-7

"Qualifying county" defined

Sec. 7. As used in this chapter, "qualifying county" means a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-8

"Resident municipal taxpayer" defined

Sec. 8. As used in this chapter, "resident municipal taxpayer", as it relates to a particular municipality, means any municipal taxpayer who resides in that municipality on the date specified in section 21 of this chapter.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-9

Imposition of tax by fiscal body of municipality

Sec. 9. (a) Except as provided in subsections (c) and (d) and in section 12(c) of this chapter, the fiscal body of a municipality located in a qualifying county may impose a municipal option income tax, which consists of a tax on the adjusted gross income of municipal taxpayers of the municipality. If the tax is imposed, the tax takes effect:

- (1) September 1, 2001, if the fiscal body adopts an ordinance to impose the tax before July 1, 2001; or
- (2) July 1 of the year that the ordinance imposing the tax is adopted, if the ordinance is adopted in 2002 or a later calendar year.

(b) A municipal fiscal body shall hold a public hearing on the proposed ordinance before adopting an ordinance under subsection (a). The municipal fiscal body shall give public notice of the public hearing under IC 5-3-1.

(c) A fiscal body may not impose a municipal option income tax under subsection (a) for a period in which the county adjusted gross income tax, the county option income tax, or the economic development income tax is in effect in the qualifying county in which the municipality is located.

(d) A fiscal body may not impose a municipal option income tax for a calendar year that begins after December 31, 2005.

As added by P.L.151-2001, SEC.6. Amended by P.L.1-2002, SEC.35.

IC 6-3.5-8-10

Tax rate

Sec. 10. (a) The maximum rate of the municipal option income tax imposed on a resident municipal taxpayer under this chapter is one percent (1%). The maximum rate of the municipal option income tax imposed on all other municipal taxpayers under this chapter is one-half percent (0.5%).

(b) A municipal option income tax imposed under this chapter applies to resident municipal taxpayers and all other municipal

taxpayers. The municipal option income tax rate in effect for the municipal taxpayers of a municipality who are not resident municipal taxpayers of that municipality is at all times one-half (1/2) of the tax rate imposed upon resident municipal taxpayers.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-11

Adoption of ordinance in order to impose tax

Sec. 11. (a) To impose a municipal option income tax to take effect September 1, 2001, the fiscal body of a municipality in a qualifying county must adopt an ordinance before July 1, 2001. The ordinance must substantially state the following:

"The _____ Fiscal Body imposes the municipal option income tax on the municipal taxpayers of _____ (insert name of municipality). The income tax is imposed at a rate of _____ percent (____%) on the resident municipal taxpayers of the municipality and at a rate of _____ percent (____%) on all other municipal taxpayers. The income tax takes effect September 1, 2001."

(b) An ordinance adopted under subsection (a) takes effect September 1, 2001.

(c) To impose a municipal option income tax in 2002 or in a later year, the fiscal body of a municipality that does not adopt an ordinance under subsection (a) must, after February 15 but before May 1 of a year, adopt an ordinance. The ordinance must substantially state the following:

"The _____ Fiscal Body imposes the municipal option income tax on the municipal taxpayers of _____ (insert name of municipality). The income tax is imposed at a rate of _____ percent (____%) on the resident municipal taxpayers of the municipality and at a rate of _____ percent (____%) on all other municipal taxpayers. The income tax takes effect July 1 of this year."

(d) An ordinance adopted under subsection (c) takes effect July 1 of the year the ordinance is adopted.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-12

Certification of municipality's budget; department of state revenue to determine amount of tax revenue collected

Sec. 12. (a) If the fiscal body of a municipality in a qualifying county adopts an ordinance under section 11(a) of this chapter, the department of local government finance may not certify a budget for the municipality under IC 6-1.1-17-16(f) for the 2002 calendar year that is greater than ninety-seven percent (97%) of the budget of the municipality certified by the department for the 2001 calendar year. The department of local government finance may not certify a budget for the municipality under IC 6-1.1-17-16(f) for any later calendar year that is greater than ninety-seven percent (97%) of the budget of the municipality certified by the department for the calendar year that immediately precedes the later calendar year.

(b) If the fiscal body of a municipality in a qualifying county adopts an ordinance in a calendar year under section 11(c) of this chapter, the department of local government finance may not certify a budget for the municipality under IC 6-1.1-17-16(f) for the calendar year that immediately succeeds the calendar year in which the ordinance is adopted that is greater than ninety-seven percent (97%) of the budget of the municipality certified by the department for the calendar year in which the ordinance was adopted. The department of local government finance may not certify a budget for the municipality under IC 6-1.1-17-16(f) for any later calendar year that is greater than ninety-seven percent (97%) of the budget of the municipality certified by the department for the calendar year that immediately precedes the later calendar year.

(c) Before July 1 of 2002 and of each year thereafter, the department of local government finance shall review the budget approved for each municipality in a qualifying county in which a municipal option income tax is in effect to determine whether the restriction under subsection (a) or (b) has been applied. If the restriction has not been applied:

- (1) the municipal option income tax is rescinded as of July 1 of the year in which the review was made;
- (2) the municipality may not impose the municipal option income tax for any later year; and
- (3) the municipality is:
 - (A) subject to subsection (d), if the municipality adopted the municipal option income tax in 2002; or
 - (B) subject to subsection (e), if the municipality adopted the municipal option income tax in a year that succeeds 2002.

(d) In May 2003, the department of state revenue shall determine for each municipality subject to this subsection the amount of tax revenue collected for the municipality after August 31, 2001, and before July 1, 2002. The department of state revenue shall immediately notify the municipality of the amount determined under this subsection. Not later than thirty (30) days after receiving notification from the department of state revenue, the municipality shall transfer the amount determined by the department under this subsection from the municipality's general fund to the county family and children's fund of the qualifying county in which the municipality is located.

(e) In May 2004, and in May of each year thereafter, the department of state revenue shall determine for each municipality subject to this subsection the amount of tax revenue collected for the municipality after June 30 of the calendar year that precedes by two (2) years the calendar year in which the determination is made and before July 1 of the year that immediately precedes the calendar year in which the determination is made. The department of state revenue shall immediately notify the municipality of the amount determined under this subsection. Not later than thirty (30) days after receiving notification from the department of state revenue, the municipality shall transfer the amount determined by the department under this section from the municipality's general fund to the county family and children's fund of the qualifying county in which the municipality is located.

(f) If a municipality makes a transfer from its general fund to the county's family and children's fund as described in subsection (d) or (e), the department of local government finance shall reduce by the amount transferred the county's maximum family and children's fund levy under IC 6-1.1-18.6 for the calendar year that immediately succeeds the year in which the transfer is made.

(g) This subsection applies if the fiscal body of a municipality in a qualifying county adopts an ordinance under section 11 of this chapter to impose a municipal option income tax. The maximum permissible ad valorem property tax levy of the municipality is not subject to any increase under IC 6-1.1-18.5-3(a) or IC 6-1.1-18.5-3(b) for taxes payable in:

- (1) the calendar year that immediately succeeds the calendar year in which the ordinance is adopted; and
- (2) each succeeding calendar year in which the municipal option income tax remains in effect.

(h) This subsection applies if the fiscal body of a municipality in a qualifying county adopts an ordinance under section 14 of this chapter to rescind the municipal option income tax, or if the municipal option income tax in a municipality is rescinded by operation of law. For purposes of IC 6-1.1-18.5-3(a) STEP ONE or IC 6-1.1-18.5-3(b) STEP ONE, the preceding calendar year is considered to be the calendar year in which an ordinance was adopted under section 11 of this chapter to impose the municipal option income tax.

As added by P.L.151-2001, SEC.6. Amended by P.L.90-2002, SEC.301.

IC 6-3.5-8-13

Increase or decrease of rate

Sec. 13. (a) The fiscal body of a municipality may increase or decrease the rate of a municipal option income tax. To increase or decrease the rate, the fiscal body must, after January 1 but before May 1 of a year, adopt an ordinance. The ordinance must substantially state the following:

"The _____ Fiscal Body increases (or decreases) the rate of the municipal option income tax. The tax rate with respect to resident municipal taxpayers is increased (or decreased) from (insert current rate) to (insert proposed rate). The tax rate with respect to all other municipal taxpayers is increased (or decreased) from (insert current rate) to (insert proposed rate).

This tax rate increase (or decrease) takes effect July 1 of this year.

(b) A fiscal body shall hold a public hearing on the proposed ordinance before adopting an ordinance under subsection (a). The municipal fiscal body shall give public notice of the public hearing under IC 5-3-1.

(c) An ordinance adopted under this section takes effect July 1 of the year the ordinance is adopted.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-14

Expiration or rescission of tax

Sec. 14. (a) A municipal option income tax imposed by a fiscal body

under this chapter remains in effect until the earlier of:

- (1) the date the tax is rescinded; or
- (2) December 31, 2005.

(b) A fiscal body may rescind the municipal option income tax by adopting an ordinance to rescind the tax after January 1 but before June 1 of a year.

(c) A fiscal body shall hold a public hearing on the proposed ordinance before adopting an ordinance under subsection (b). The municipal fiscal body shall give public notice of the public hearing under IC 5-3-1.

(d) An ordinance adopted under this section takes effect July 1 of the year the ordinance is adopted.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-15

Certified copies of ordinances sent to department

Sec. 15. Immediately upon adoption under this chapter of an ordinance to impose or rescind a municipal option income tax, or an ordinance to increase or decrease the rate of the tax, the legislative body of the municipality shall send a certified copy of the ordinance to the department by certified mail.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-16

Tax not in effect during entire taxable year

Sec. 16. If a municipal option income tax is not in effect during an individual taxpayer's entire taxable year, the amount of municipal option income tax that the taxpayer owes for that taxable year equals the product of:

- (1) the amount of the municipal option income tax the taxpayer would owe if the tax had been imposed during the taxpayer's entire taxable year; multiplied by
- (2) a fraction. The numerator equals the number of days during the taxpayer's taxable year that the municipal option income tax was in effect. The denominator equals the total number of days in the taxpayer's taxable year.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-17

Credit for elderly or totally disabled

Sec. 17. (a) If, for a particular taxable year, an individual taxpayer is allowed, or a municipal taxpayer and the municipal taxpayer's spouse who file a joint return are allowed, a credit for the elderly or the totally disabled under Section 22 of the Internal Revenue Code (as defined in IC 6-3-1-11), the municipal taxpayer is entitled or the municipal taxpayer and the municipal taxpayer's spouse are entitled to a credit against their municipal option income tax liability for that same taxable year. The amount of the credit equals the lesser of the following:

- (1) The product of:
 - (A) the credit for the elderly or the totally disabled for the same taxable year; multiplied by

(B) a fraction. The numerator is the municipal option income tax rate imposed against the municipal taxpayer or the municipal taxpayer and the municipal taxpayer's spouse. The denominator is fifteen-hundredths (0.15).

(2) The amount of municipal option income tax imposed on the municipal taxpayer or the municipal taxpayer and the municipal taxpayer's spouse.

(b) If a municipal taxpayer and the municipal taxpayer's spouse file a joint return and are subject to different municipal option income tax rates for the same taxable year, they shall compute the credit under this section by using the formula provided in subsection (a), except that they shall use the average of the two (2) tax rates imposed against them as the numerator referred to in subsection (a)(1)(B).

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-18

Distribution to municipality

Sec. 18. (a) Revenue derived from the imposition of a municipal option income tax shall, in the manner prescribed by this section, be distributed to the municipality that imposed the tax. The amount that is to be distributed to a municipality during an ensuing calendar year equals the amount of municipal option income tax revenue that the department, after reviewing the recommendation of the budget agency, estimates will be received from that municipality during the twelve (12) month period beginning July 1 of the immediately preceding calendar year and ending June 30 of the ensuing calendar year.

(b) Before June 16 of each calendar year, the department, after reviewing the recommendation of the budget agency, shall estimate and certify to each adopting municipality and to the county auditor of the qualifying county the amount of municipal option income tax revenue that will be collected from that municipality during the twelve (12) month period beginning July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year. The amount certified is the municipality's "certified distribution" for the immediately succeeding calendar year. The amount certified may be adjusted under subsection (c) or (d).

(c) The department may certify to an adopting municipality an amount that is greater than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the budget agency, determines that there will be a greater amount of revenue available for distribution from the municipality's account established under section 19 of this chapter.

(d) The department may certify an amount less than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the budget agency, determines that a part of those collections needs to be distributed during the current calendar year so that the municipality will receive its full certified distribution for the current calendar year.

(e) One-twelfth (1/12) of each adopting municipality's certified distribution for a calendar year shall be distributed from its account established under section 19 of this chapter to the appropriate

municipality on the first day of each month of that calendar year.

(f) All distributions from an account established under section 19 of this chapter shall be made by warrants issued by the auditor of state to the treasurer of state ordering the appropriate payments.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-19

Establishment of special account in state general fund

Sec. 19. (a) A special account within the state general fund shall be established for each municipality adopting a municipal option income tax. Revenue derived from the imposition of the municipal option income tax shall be deposited in that municipality's account in the state general fund.

(b) Income earned on money held in an account under subsection (a) becomes a part of that account.

(c) Revenue remaining in an account established under subsection (a) at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-20

Reduction of general fund property tax levy of municipality receiving distribution

Sec. 20. (a) The department of local government finance shall each year reduce the general fund property tax levy of a municipality receiving a distribution under this chapter in that year. The municipality's general fund property tax levy shall be reduced by the amount of the distribution received or to be received by the municipality during the year. The department of local government finance shall certify to the auditor of the qualifying county the property tax rate applicable to the municipality's general fund after the property tax reduction under this section.

(b) A municipality shall treat a distribution that the municipality receives or is to receive during a particular calendar year as a part of the municipality's property tax levy for the general fund for that same calendar year for purposes of fixing the municipality's budget and for purposes of the property tax levy limits imposed by IC 6-1.1-18.5. However, the distributions shall not reduce the total county tax levy that is used to compute the state property tax replacement credit under IC 6-1.1-21. In addition, for purposes of computing and distributing any excise taxes or income taxes in which the distribution is based on property taxes, the distributions shall be treated as though they were property taxes that were due and payable during that same calendar year.

(c) A municipality may use distributions received under this chapter for any purpose for which the municipality may use property tax revenues.

As added by P.L.151-2001, SEC.6. Amended by P.L.90-2002, SEC.302.

IC 6-3.5-8-21

Determination of individual to be treated as resident municipal

taxpayer

Sec. 21. (a) For purposes of this chapter, an individual shall be treated as a resident municipal taxpayer of the municipality in which the individual:

- (1) maintains a residence, if the individual maintains only one (1) residence in Indiana;
- (2) if subdivision (1) does not apply, registers to vote;
- (3) if subdivision (1) or (2) does not apply, registers the individual's personal automobile; or
- (4) if subdivision (1), (2), or (3) does not apply, spends the majority of the individual's time in Indiana during the taxable year in question.

(b) Whether an individual is a resident municipal taxpayer is determined on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of the individual's residence to another location in Indiana during a calendar year, the individual's liability for municipal option income tax is not affected.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-22

Applicability of adjusted gross income tax law

Sec. 22. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) remittances;
- (5) incorporation of the provisions of the Internal Revenue Code;
- (6) penalties and interest;
- (7) exclusion of military pay credits for withholding; and
- (8) exemptions and deductions;

apply to the imposition, collection, and administration of the municipal option income tax. The municipal option income tax is a listed tax and an income tax for purposes of IC 6-8.1.

(b) The provisions of IC 6-3-1-3.5(a)(5), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the municipal option income tax.

(c) Each employer shall report to the department the amount of withholdings attributable to each municipality. This report shall annually be submitted with the employer's withholding report.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-23

Department to submit report to municipality

Sec. 23. Before February 1 of each year, the department shall submit a report to each municipality indicating the balance at the end of the preceding year in the municipality's account established under section 19 of this chapter.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-24

Credit for income taxes imposed by other local governmental entities

Sec. 24. (a) Except as provided in subsection (b), if for a particular taxable year a municipal taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside of Indiana, that municipal taxpayer is entitled to a credit against the municipal option income tax liability for that same taxable year. The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the municipal option income tax. However, the credit provided by this section may not reduce a municipal taxpayer's municipal option income tax liability to an amount that is less than what would have been owed if the income subject to taxation by the other governmental entity had been ignored.

(b) The credit provided by this section does not apply to a municipal taxpayer to the extent that the other governmental entity provides for a credit to the taxpayer for the amount of municipal option income taxes owed under this chapter.

(c) To claim the credit provided by this section, a municipal taxpayer must provide the department with satisfactory evidence that the taxpayer is entitled to the credit.

As added by P.L.151-2001, SEC.6.

IC 6-3.5-8-25

Determination of rate when taxpayer subject to different tax rates

Sec. 25. If for any taxable year a municipal taxpayer is subject to different tax rates for the municipal option income tax imposed by a municipality, the taxpayer's municipal option income tax rate for that municipality and that taxable year is the rate determined in the last STEP of the following STEPS:

STEP ONE: Multiply the number of months in the taxpayer's taxable year that precede July 1 by the rate in effect before the rate change.

STEP TWO: Multiply the number of months in the taxpayer's taxable year that follow June 30 by the rate in effect after the rate change.

STEP THREE: Divide the sum of the amounts determined under STEPS ONE and TWO by twelve (12).

As added by P.L.151-2001, SEC.6.